

ORIGINAL

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED NOV 22 2000 CLERK, U.S. DISTRICT COURT By _____ Deputy

STEPHEN E. JONES, LINDA D.
LYDIA and CAROLINE FRANCO,
as Texas registered voters,

Plaintiffs,

vs.

GOVERNOR GEORGE W. BUSH
AND RICHARD B. CHENEY, as
candidates for President and Vice-
President of the United States of
America; and Ernest Angelo, Gayle West,
Betty R. Hines, James B. Randall,
Helen Quiram, Henry W. Teich, Jr.,
William Earl Juett, Hally B. Clements,
Howard Pebley, Jr., Adair Margo,
Tom F. Ward, Jr., Carmen P. Castillo,
Chuck Jones, Michael Paddie,
James Davidson Walker,
Joseph I. O'Neil, III, Betsy Lake,
Robert J. Peden, Jim Hamlin,
Mary E. Cowart, Sue Daniel,
James R. Batsell, Loyce McCarter,
Michael Dugas, Neal J. Katz,
Mary Ceverha, Clyde Moody Siebman,
Randall Tye Thomas, Cruz G. Hernandez,
John Abney Culberson, Stan Stanart,
and Ken Clark, Texas Electors,

Defendants.

CIVIL ACTION NUMBER

300 - CV2543-D

EMERGENCY AMENDED COMPLAINT
AND APPLICATION FOR INJUNCTIVE
AND DECLARATORY RELIEF

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TO THE HONORABLE PRESIDING JUDGE:

I. PARTIES

1. Plaintiffs are residents of Dallas County, Texas and voted in the general election on November 7, 2000 for President and Vice-President.

2. Governor GEORGE W. BUSH is a resident of the State of Texas and is the Republican nominee for President of the United States. The Governor may be served at the Governor's Mansion, 1010 Colorado, Austin, Texas, 78701 or wherever he may be located.

3. RICHARD B. CHENEY is a resident of the State of Texas and is the Republican nominee for Vice-President of the United States. Summons may be delivered to Mr. CHENEY at his residence, 1218 Euclid Avenue, Highland Park, Texas 75205 or wherever he may be located.

4. Plaintiffs will serve the following Texas electors at these addresses:
Ernest Angelo, Midland, Texas; Gayle West, Houston, Texas; Betty R. Hines, Texarkana, Texas; James B. Randall, Austin, Texas; Helen Quiram, Waco, Texas; Henry W. Teich, Jr., Cresson, Texas; William Earl Juett, Amarillo, Texas; Hally B. Clements, Victoria, Texas; Howard Pebley, Jr., McAllen, Texas; Adair Margo, El Paso, Texas; Tom F. Ward, Jr., Granbury, Texas; Carmen P. Castillo, Houston, Texas; Chuck Jones, Amarillo, Texas; Michael Paddie, Village Mills, Texas; James Davidson Walker, San Antonio, Texas; Joseph I. O'Neill, III, Midland, Texas; Betsy Lake, Houston, Texas; Robert J. Peden, Hondo, Texas; Jim Hamlin, Duncanville, Texas; Mary E. Cowart, Pasadena, Texas; Sue Daniel, Dallas, Texas; James R. Batsell, Brownsville, Texas; Loyce McCarter, Lavernia, Texas; Michael Dugas, Pasadena, Texas; Neal J. Katz, Plano, Texas; Mary Ceverha, Dallas, Texas; Clyde Moody Siebman, Pottsboro, Texas; Randall Tye Thomas, Gun Bill City, Texas; Cruz G. Hernandez, Burelson, Texas; John Abney Culberson, Houston, Texas; Stan Stanart, Spring,

Texas; Ken Clark, League City, Texas.

II. JURISDICTION

5. This Court has jurisdiction pursuant to 28 U.S.C. 1331 as this complaint raises a serious and urgent federal question arising from the Constitution of the United States, Article II, Section 1, Clause 3 and the Twelfth Amendment.

III. VENUE

6. This Court has venue pursuant to 28 U.S.C. 1391(b)(1) and (2) as Dallas County is Defendant CHENEY'S place of residence and a substantial part of the events or omissions giving rise to the complaint occurred within the Dallas Division of the Northern District of Texas

IV. FACTS

Plaintiffs allege upon knowledge and belief as follows:

7. On November 7, 2000 Plaintiffs and almost 100 million citizens of the United States cast their votes in the general election.

8. In Texas, Governor GEORGE W. BUSH and RICHARD B. CHENEY received the most votes for President and Vice-President.

9. Neither Governor BUSH nor Vice-President Gore captured the majority of electoral votes. Ongoing lawsuits have contested the returns in Florida.

10. On December 18, 2000 the 32 Texas Electors are scheduled to cast the State's electoral votes. Although not required to do so by law, the Electors have all stated they will vote for Governor BUSH and Mr. CHENEY.

11. However, the United States Constitution mandates that two individuals **cannot** inhabit the same state and be elected to the nation's two highest offices. The Twelfth Amendment states:

The Electors shall meet in their respective states,
and vote by ballot for President and Vice-President,
**one of whom, at least, shall not be an inhabitant of
the same state with themselves** (emphasis added)

12. In or about November 1995, Mr. CHENEY purchased his primary residence in Highland Park, Texas and began his employment as President and CEO of Halliburton Energy Services, Inc. He has continued to inhabit Texas through the present date, **and will be an inhabitant of Texas next month on December 18, 2000.**

13. Plaintiffs request that this Honorable Court take judicial notice under Rule 201, Federal Rules of Evidence, of the following 20 facts that conclusively show that Mr. CHENEY has been an inhabitant of Texas for the last five years, is an inhabitant of Texas at the present time, and will be an inhabitant of Texas when the Electors meet and vote in only 26 days on December 18, 2000 or at any other relevant date:

A) **He purchased his primary residence at 3812 Euclid Avenue, Highland Park,**
Texas, appraised in 2000 for \$1,663,270.00, on November 3, **1995.**

B) **He inhabited his Highland Park, Texas residence for the last five years.**

C) He had **not** moved to another *primary* residence.

D) He had **not** stopped inhabiting his primary Texas residence.

E) He filed for and received the Texas homestead exemption for his Texas residence for 1995, 1996, 1997, 1998, 1999, and **2000.**

F) He had **not** rented his Texas residence, boarded it up, or vacated it.

G) **He paid real estate taxes since 1995 to the City of Highland Park,** Dallas County, Dallas County Community College, Highland Park I.S.D. and Parkland Hospital in Dallas since he

purchased the residence in Highland Park in 1995.

H) He voted at least twice in Precinct 1227 in Highland Park, Texas since 1995.

He even applied for his Texas voting privileges almost one-half year before his wife Lynne applied to vote in Texas.

I) He worked at 500 North Akard Street in downtown Dallas as the President and CEO of Halliburton Company (and related companies) **from 1995 through July 2000**, and only quit to campaign to be Vice-President.

J) He continuously held a Texas driver's license listing a Dallas address as his address.

K) He changed his personal records at the Texas Department of Public Safety on February 22, 2000 and again listed his Dallas address.

L) He filed his federal income tax returns listing himself as a Texas resident.

M) He did not pay any other state's income tax.

N) He received his mail in Dallas.

O) He registered his automobiles in Texas. He paid taxes on them in Dallas County.

P) He listed a Dallas address on Federal Election Commission forms in March, 1999 when he donated money to the Bush Presidential Exploratory Committee.

Q) He listed a Dallas address in the annual report of Brown & Root Holdings, Inc. and other corporation's official records between 1996 and 2000.

R) He was treated by Texas doctors, including a cardiologist in Houston.

S) He banked in Dallas.

T) He had not abandoned his Texas homestead exemption.

14. Governor BUSH is also an inhabitant of the State of Texas. His primary residence is the Governor's Mansion in Austin. He owns a second home in Crawford, Texas.

15. Beginning in 1999, Mr. CHENEY served as a key advisor to Governor Bush. In April, 2000 he began serving as chairman of the Governor's vice-presidential search committee.

16. On July 3, 2000 during a three hour meeting at the Governor's ranch, "Bush again asked Cheney if would consider the vice presidency. This time Cheney said he would consider it," according to *The Washington Post* (page one article, July 25, 2000).

17. On July 19, 2000 Mr. CHENEY told his board of directors at Halliburton that he had accepted the vice-presidential offer.

18. On July 20, 2000 "**Cheney flew to Wyoming to switch his voter registration. He took that step, designed to avoid a constitutional obstacle to a ticket in which the presidential and vice presidential nominees are from the same state**, without informing the Bush campaign, (a Bush campaign director Karen) Hughes said," according to *The Washington Post* (July 25, 2000).

19. Mr. CHENEY then just as quickly flew back to his home in Texas.

20. On Tuesday, July 25, 2000 (6:22 a.m.) Governor BUSH publically offered him the job.

21. On Monday, July 31, 2000 the party's convention began in Philadelphia.

22. Immediately after the convention, Mr. CHENEY traveled constantly to campaign.

23. He did **not** permanently inhabit Wyoming after he registered to vote there in July.

24. Mr. CHENEY did return to Wyoming to campaign and to vote in the election, however.

25. On November 7, 2000 immediately after voting, Mr. CHENEY flew back to his true home in Texas to watch the election results.

26. On November 10, 2000 a similar lawsuit was filed against Mr. CHENEY and Gov. Bush in U.S. District Court in Florida, No. 00-9010, by Lawrence Caplan.

27. On November 16, 2000 (this past Thursday), *after* receiving his summons and presumably reading about the lawsuit, in the press, and speaking to his attorneys, Mr. Cheney suddenly listed his

Texas residence for sale.

28. In a Sunday, November 19, 2000 *Dallas Morning News* article about the Caplan lawsuit, Mr. CHENEY's spokesperson called it "nonsense" since he owned a second home in Wyoming, had listed the Texas residence on November 16th, registered to vote in Wyoming on July 21st, and had surrendered his Texas driver's license and auto registration (dates were not given).

29. The Bush-Cheney ticket continually criticized their opponents and President Clinton for not obeying laws or appearing to evade them. All candidates stated that they wished to participate in a legal and fair election. Whoever wins this extraordinary election will have to swear to preserve, protect, and defend the Constitution and the nation's laws.

FIRST CLAIM FOR RELIEF

Declaratory Judgment

30. Plaintiffs incorporate paragraphs 8 through 29 of this Complaint as if fully set forth herein.

31. This Claim is brought pursuant to the 28 U.S.C. 2201 to construe the Constitution of the United States and to declare the Constitutional rights of Plaintiffs..

32. Defendant CHENEY has wrongfully claimed that he is or will be an inhabitant of Wyoming solely to defeat and evade the constitutional requirements for national office.

33. Both his last minute change of voting registration and his claim of property ownership were cynical and transparent disguises to make it appear that Mr. CHENEY had or will miraculously transform himself into an "inhabitant" of Wyoming so that he may legally be elected.

34. However, based on the above recitation of facts, it is clear that Mr. CHENEY is **not** legally an "inhabitant" of Wyoming and will **not** be a legal "inhabitant" of Wyoming on December 18, 2000.

35. He has **not** inhabited, permanently and continuously, any city in Wyoming since moving to Dallas in 1995.

36. Coincidentally, Mr. CHENEY also owned a home in Jackson Hole, Wyoming, a ski resort with many “second homes” and even “third homes” occasionally used or rented out by wealthy individuals or corporations. He claims this somehow proves he was already an “inhabitant” of Wyoming. He may also own a residence in MacLean, Virginia, a suburb of Washington, D.C.

37. Since November 1995, Mr. CHENEY has spent very little time in Jackson Hole, other than vacationing or temporarily staying there.

38. He has no employment, income, or any other reason to inhabit Wyoming, especially in the middle of this hotly contested election for national office.

39. Before the campaign, he ran a multibillion dollar oil service company from Dallas.

40. Mr. CHENEY clearly would **not** have gone to the trouble and expense of changing his voting registration to become a “resident” on July 20 if he did not believe he had to circumvent the Twelfth Amendment. He voted rarely -- only twice out of the 18 times he could have voted as a Texas inhabitant. His flying back and forth just to vote in Wyoming on November 7th was astonishing.

41. More importantly, Mr. Cheney has **not** given up his Texas inhabitancy as of the present date. He had no reason to outside of constitutional concerns. He had not moved out of his residence in Highland Park. Although he finally listed it for sale on November 16, 2000, he may never actually sell it. He may revoke the listing. He might not move if he is defeated. He has certainly **not** given up the generous Texas homestead exemption on his mansion, which he again used in 2000. He still did **not** have to pay any Texas income tax on his hefty income and over \$20,000,000.00 retirement package.

42. Amazingly, he **will not** even legally qualify under the less stringent status of “**resident**” in Wyoming on December 18, 2000. For example, “resident” is defined as

“A United States citizen **who has been a resident of Wyoming for not less than one (1) year and who has not claimed residency elsewhere for any purpose during that one (1) year period immediately preceding** the date of application for a license, permit, or certificate.” Wyoming Statutes, 23-1-102(a)(ix), 1977.

Since this is an election issue, the definition of residence, according to the Wyoming Election Code, Section 22-1-102 (xxx), W.S. 1999, is the place of a person’s **actual** habitation.

43. As the ultimate proof, Lynne Cheney, his wife for the last 36 years, had neither registered to vote in Wyoming, nor joined her husband in his ruse in any way whatsoever.

44. If Mr. CHENEY is successful in his magical odyssey from Texas to Wyoming, any New Yorker will merely have to buy a condo in Hawaii, apply to vote there, and be able to prove he is a Hawaii inhabitant by citing the courts to Cheney’s constitutional charade.

45. The very Bush-Cheney campaign, and possible victory, was based on the public’s need for national leaders who obeyed the law, were honest, and had integrity. They promised to only appoint judges who would *strictly* interpret the Constitution. The Twelfth Amendment, strictly interpreted, prevents the Electors from voting for these two men.

46. The Bush-Cheney campaign continually lambasted its opponents’ conduct. They vilified President Clinton for his alleged falsification and obstruction of justice.

47. If this Honorable Court takes no action in this matter, the Constitutional requirements for the presidential election will have been arrogantly and cynically trampled on.

48. Unless this Court grants this Claim for Relief, the 2000 presidential election will be unconstitutional and illegal.

49. If Governor BUSH and Mr. CHENEY go on to win the election, they will have only done so by denying Plaintiffs their constitutional rights.

50. If Governor BUSH is elected, he will have to swear to uphold and defend the Constitution at his inauguration in an oath administered by the Chief Justice of the Supreme Court.

51. Unless this Court grants Plaintiffs' Claim, the national interest will have been severely damaged. As the Bush campaign noted by releasing this statement by retired Gen. H. Norman Schwarzkopf about the Florida ballot count, "if this happens it will be a very sad day in our country."

52. Plaintiffs therefore request that this Honorable Court uphold the United States Constitution, Article II, Section 1, Clause 3 and the Twelfth Amendment and issue a judgment declaring that on the date the Electors shall meet and vote in the Electoral College or at any other constitutionally relevant date:

A) Governor BUSH is an "inhabitant" of the State of Texas;

B) Mr. CHENEY is an "inhabitant" of the State of Texas;

C) Both candidates are therefore "inhabitants" of Texas, the same state as the Texas Electors who will be voting for them in the Electoral College,;

D) The Constitution will be violated when the Texas Electors cast their ballots for Texas Governor BUSH and Texan CHENEY on December 18, 2000; and therefore

E) The 32 electoral votes from Texas may not be voted in favor of Governor BUSH or Mr. CHENEY in the Electoral College on December 18, 2000 or at any other time.

53. Plaintiffs have been required to retain the services of counsel to prosecute this action and have incurred the costs of suit herein. Plaintiffs request an award for their costs and reasonable and necessary attorney's fees as are equitable and just, as well as for further relief that may be necessary or proper, as provided by said Act.(§§ 37.009 and 37.011).

SECOND CLAIM FOR RELIEF

Application for Emergency Preliminary Injunctive Relief

54. Paragraphs 8 through 29, inclusive, of this Complaint are incorporated in the Second Claim for Relief as if fully set forth herein.

55. Plaintiff has a right, as do all citizens of the United States, for the election for President and Vice-President in the Electoral College to be held in strict accordance with the Constitution of the United States and all laws governing the conduct of elections.

56. Due to the ruse employed by Defendant CHENEY, and the fact that both candidates are inhabitants of Texas, the 2000 election will fail the requirements set forth in the Constitution if its 32 electoral votes are permitted to be voted in favor of Governor BUSH and Mr. CHENEY on December 18, 2000 or at any other time.

57. The counting of ballots in this election has been an extraordinary process. Both candidates have indicated their intent to abide by all governing rules and procedures to insure that the election results are reliable and legal.

58. If the 32 Electors are permitted to cast their votes in the Electoral College in favor of Governor BUSH and Mr. CHENEY on December 18, 2000, Plaintiff and all other American citizens will suffer immediate and irreparable injury by the loss of valuable and unique rights guaranteed by the United States Constitution and its Amendments.

59. Furthermore, if the 32 Electors are permitted to cast their votes in the Electoral College in favor of Defendants Governor BUSH and Mr. CHENEY, the next President and Vice-President of the United States will be unconstitutionally and illegally elected.

60. Accordingly, Plaintiff does not have an adequate remedy at law and can only be protected by the issuance of a preliminary injunction restraining Defendants, their officers, agents, employees,

or attorneys from:

A) Permitting any of the 32 Electors to cast any of the 32 electoral votes held by Texas in favor of either Governor BUSH or Mr. CHENEY in the Electoral College on December 18, 2000;

B) Certifying to the United States Congress, Texas Secretary of State, or to any other person, agency, media, or entity that any of the 32 electoral votes can be cast in favor of Governor BUSH and Mr. CHENEY;

C) Certifying to the United States Congress, Texas Secretary of State, or to any other person, agency, media, or entity that any of the 32 electoral votes were cast in favor of Governor BUSH or Mr. CHENEY.

61. Plaintiff requests that due to the quickly approaching deadline of December 18, 2000 that discovery be expedited, and that Mr. CHENEY be ordered to attend a deposition on or before December 1, 2000.

62. Plaintiff requests an expedited hearing due to the extraordinary facts, compelling national interest, and urgent deadlines.

63. Plaintiff requests this hearing be consolidated with the final trial on the merits, pursuant to Rule 65 (a)(2) F.R.C.P., no later than December 12, 2000.

64. Plaintiff requests that the preliminary injunction be made permanent.

WHEREFORE, PREMISES CONSIDERED, request is respectfully made that Defendants be cited to appear and answer herein, and that:

1) The Court issue a preliminary injunction, enjoining Defendants, their officers, agents, employees, or attorneys from:

A) Permitting any of the 32 Electors to cast any of the 32 electoral votes held by

Texas in favor of either Governor BUSH or Mr. CHENEY in the Electoral College on December 18, 2000;

B) Certifying to the United States Congress, Texas Secretary of State, or to any other person, agency, media, or entity that any of the 32 electoral votes can be cast in favor of Governor BUSH and Mr. CHENEY;

C) Certifying to the United States Congress, Texas Secretary of State, or to any other person, agency, media, or entity that any of the 32 electoral votes were cast in favor of Governor Bush or Mr. Cheney.

2) That the hearing on the preliminary injunction be set at the earliest possible date on the Court's calendar before December 7, 2000 and no later than December 12, 2000 and be consolidated with the final trial on the merits;

3) That upon final hearing, the preliminary injunction be made permanent;

4) That upon final hearing, Plaintiffs recovers judgment declaring that on the date the Electors meet and vote in the Electoral College or at any other Constitutionally relevant date:

A) Governor BUSH is an "inhabitant" of the State of Texas;

B) Mr. CHENEY is an "inhabitant" of the State of Texas;

C) Both candidates are therefore inhabitants of Texas, the same state as the Texas Electors who will be voting for them in the Electoral College;

D) When the Texas Electors vote for BUSH and CHENEY, the Twelfth Amendment will be violated since Governor BUSH and Mr. CHENEY are inhabitants of the same state as the Texas Electors; and

E) None of the 32 electoral votes from Texas may be voted in favor of Governor BUSH and Mr. CHENEY in the Electoral College.


5) Upon final hearing, that Plaintiffs recover judgment against Defendants for their reasonable and necessary attorney's fees and costs and such other and further relief as the Court may deem appropriate.

DATED: This 22 day of November, 2000.

Respectfully submitted,

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